

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

B.H.
57

CASEY LASHLEY, DONNA RUSS, BARBARA RUSS,
& BARBARA RUSS as Legal Guardian of T [REDACTED]
R [REDACTED] an infant under the age of fourteen years

Plaintiffs

-against-

DETECTIVE JUSTIN JOHNSON, Shield No. 3988
POLICE OFFICER ALBERTO PIZARRO Shield No. 4954
P.O. "JOHN DOES" 1-8 AND
THE CITY OF NEW YORK,

Defendant.

COMPLAINT AND
JURY TRIAL DEMAND

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 20 2009 ★

BROOKLYN OFFICE

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BLOCK, J.

Plaintiffs, CASEY LASHLEY, BARBARA RUSS, DONNA RUSS AND TAMIA RUSS,

by

their attorneys, JONATHAN T. LATIMER III, ESQ. AND ALAN D. LEVINE, ESQ complaining
of the defendants herein, respectfully alleges as follows:

JURISDICTION

1. This is a civil action, seeking compensatory damages, punitive damages and attorney's fees.
2. This action is brought pursuant to 42 U.S.C. sections 1983 and 1988 and the fourth and fourteenth amendments to the Constitution of the United States.
3. Jurisdiction is founded upon 28 U.S.C. sections 1331, 1343 and 1367.
4. Plaintiff, invoking the pendent jurisdiction of this Court, also seeks monetary damages, both compensatory and punitive, as well as attorney's fees, for violation of civil rights, battery, false

5. Venue is properly alleged in the Eastern District of New York in that the acts complained of herein occurred within this District.

6. Plaintiffs hereby demand a trial by jury of all issues in this action that are so triable.

7. At all times relevant hereto, plaintiff, CASEY LASHLEY, was and is a natural persons, residents of Kings County, City and State of New York.

8. At all times relevant hereto, plaintiff BARBARA RUSS was and is a natural person, resident of Kings County, City and state of New York.

9. At all times relevant hereto, plaintiff DONNA RUSS was and is a natural person, resident of Kings County, City and State of New York.

10. At all times plaintiff T [REDACTED] R [REDACTED], an infant under the age of fourteen years, was and is a resident of Kings County, City and State of New York.

11. At all times relevant hereto, defendant DETECTIVE JUSTIN JOHNSON Shield No. 3988 (hereinafter “JOHNSON”) was and is a natural person, employed as a sergeant by the Police Department of the defendant CITY OF NEW YORK.

9. At all times relevant hereto, defendant POLICE OFFICER ALBERTO PIZARRO shield No. 4954 (hereinafter “PIZARRO”) was and is a natural person, employed as a police officer by the Police Department of defendant CITY OF NEW YORK

10. At all times relevant hereto, defendants P.O. "JOHN DOES" (hereinafter "DOES") were and are natural persons, employed as police officers by the Police Department of defendant CITY OF NEW YORK.

11. On April 17, 2008, which date was within ninety days of the occurrence complained of herein, plaintiffs filed with the Comptroller of the City of New York a verified notice of claim setting forth the time when, nature of and manner in which said claim arose.

12. More than Thirty days have elapsed from the date the aforesaid verified notice of claim was served and the Comptroller has neglected and refused to make payment of said claim.

13. This action in commenced within one year and ninety days from the date that the cause of action herein accrued.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
(42 U.S.C. 1983)

14. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "13" hereinabove as if more fully set forth at length herein.

15. On January 17, 2008 Defendant JOHNSON went before the Honorable Justice James Gibbons, at the Criminal Court of the City of New York, 100 Centre Street, New York, N.Y. and made an application for the issuance of a warrant to search the location of 151 North Oxford Walk, Apartment 4E, Kings County, N.Y.

16. On January 17, 2008, in support of his request for the issuance of the aforementioned warrant, Defendant JOHNSON asserted, both orally and in writing, that through the use of a confidential informant the police had been able to successfully complete two controlled buys of crack/cocaine from the aforementioned apartment

17. On January 17, 2008, based upon the sworn assertions of Defendant JOHNSON, The Honorable Justice James Gibbons granted Defendant JOHNSON's request and signed and issued the requested warrant.

18. As of the date of this complaint, none of the plaintiffs nor any other occupant of the aforementioned apartment has been charged with the sale of a controlled substance as a result of the alleged controlled buys sworn to by Defendant JOHNSON in his application for the issuance of the warrant.

19. The plaintiffs CASEY LASHLEY, DONNA RUSS, BARBARA RUSS, and T [REDACTED] did not make any sales of crack cocaine as alleged by defendant JOHNSON.

20. On or about January 19, 2008 at approximately 6:00am, plaintiffs BARBARA RUSS and T [REDACTED] R [REDACTED] were asleep inside their home, apartment 4E at 151 North Oxford Walk, Brooklyn, New York.

21. On January 19, 2008 at approximately 6:00 am, at the aforementioned apartment 4E the Defendant JOHNSON, Defendant PIZARRO and the "JOHN DOE" defendants herein forced there way into said apartment by breaking through the door .

22. At the aforementioned date, time and location the defendant JOHNSON, defendant PIZARRO, and the "JOHN DOE" defendants herein forced plaintiffs BARBARA RUSS and T [REDACTED] R [REDACTED] out of their beds and out of the apartment at gunpoint and handcuffed plaintiff BARBARA RUSS.

23. Defendant JOHNSON, defendant PIZARRO, and the "JOHN DOE" defendants herein began to search the apartment and damaged several items of furniture and personal belongings.

24. At approximately 6:40 am while the Defendant JOHNSON, defendant PIZARRO, and

the "JOHN DOE" defendants were searching and damaging the apartment, plaintiff DONNA RUSS arrived.

25. Plaintiff DONNA RUSS was immediately arrested, searched, handcuffed and taken into police custody by defendant JOHNSON, defendant PIZARRO, and the "JOHN DOE" defendants herein.

26. Plaintiff DONNA RUSS offered no resistance

27. Plaintiff DONNA RUSS had money seized from a pouch around her waist by defendants JOHNSON, defendant PIZARRO and the "JOHN DOE" defendants.

28. Plaintiff DONNA RUSS was placed inside a unmarked police vehicle and then transported to the 88th Precinct.

29. Plaintiff DONNA RUSS was held in a holding cell at the 88th Precinct until approximately 8:00pm that night, a period of about 13 hours.

30. Plaintiff DONNA RUSS was never charged with any crime and was released from the precinct.

31. Plaintiff CASEY LASHLEY voluntarily arrived at the 88th precinct at about 7:30 am.

32. Plaintiff CASE LASHLEY was immediately handcuffed and placed under arrest by Defendant JOHNSON, defendant PIZARRO and the "JOHN DOE" defendants.

33. While at the 88th Precinct the plaintiff CASEY LASHLEY was kicked, punched , beaten and subjected to a cavity search by defendant JOHNSON, defendant PIZARRO, and the "JOHN DOE" defendants herein.

34. Defendant JOHNSON alleges, in the criminal court complaint filed against plaintiff CASEY LASHLEY that CASEY LASHLEY committed the crimes of criminal possession of a

controlled substance in the seventh degree and criminally using drug paraphernalia in the second degree, both A misdemeanors.

35. Defendant JOHNSON asserts that a small quantity of cocaine and a scale were found during the execution of the aforementioned search warrant.

36. All plaintiffs deny the presence of any cocaine at the location, as alleged by defendant JOHNSON

37. These charges have been reduced to B misdemeanors and are still pending in Brooklyn criminal court.

38. No person was ever arrested or charged with the sale of cocaine as a result of the alleged controlled buys by the confidential informant, which were the basis of the application for the warrant.

39. All plaintiffs deny the occurrence of any sale of a controlled substance at the apartment as alleged By defendant JOHNSON.

40. The individual defendants violated the plaintiffs' rights to be free from arrest without probable cause and excessive force and to the due process of law guaranteed to them, respectively, by the fourth and fourteenth amendments to the Constitution of the United States in that, acting under color of state law, they without any probable cause or justification, whatsoever, seized and hand cuffed the plaintiffs BARBARA RUSS, T [REDACTED] R [REDACTED] DONNA RUSS AND CASEY LASHLEY, falsely imprisoned DONNA RUSS AND CASEY LASHLEY at the precinct, and beat and maliciously prosecuted CASEY LASHLEY.

41. By reason of the aforesaid acts committed by the individual defendants hereto, plaintiffs suffered deprivation of their rights to be free of arrest without probable cause and from

excessive and unnecessary force, and to the due process of law guaranteed them respectively, by the fourth and fourteenth amendments to the Constitution of the United States and as a result, suffered losses of liberty, losses of property, physical injury and plaintiff and were forced to expend sums for legal representation.

42. By reason of the unconstitutional and illegal actions taken against the plaintiffs by the individual defendants, plaintiffs have been damaged in the amount of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1000,000.00) Dollars as punitive damages against the individual defendants.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(False arrest)

43. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "42" hereinabove as if more fully set forth at length herein.

44. On January 19, 2008 at approximately 6:40 am at or near 151 North Oxford Walk, apartment 4E Brooklyn N.Y. defendant JOHNSON, PIZARRO and the "JOHN DOE" defendants, without probable cause, forcibly, wrongfully and unlawfully arrested plaintiff DONNA RUSS and caused her to be incarcerated in the station house of the 88th Precinct.

45. On January 19, 2008 at approximately 7:30 am outside of the 88th Precinct defendant JOHNSON, PIZARRO and the "JOHN DOE" defendants, without probable cause, forcibly, wrongfully and unlawfully arrested plaintiff CASEY LASHLEY and caused him to be incarcerated in the station house of the 88th Precinct.\

46. Defendant JOHNSON, PIZARRO and the "JOHN DOE" defendants falsely, maliciously, wrongfully, unlawfully and illegally accused plaintiffs of having committed the crimes

of possession of a controlled substance and possession of drug paraphernalia, both B misdemeanors.

47. Plaintiffs were illegally, falsely, maliciously wrongfully and unlawfully kept in confinement at the station house of the 88th Precinct.

48. At the time they committed the aforesaid acts of false arrest and false imprisonment, defendant JOHNSON, PIZARRO and the "JOHN DOE" defendants were acting within the scope of their employment by the defendant CITY OF NEW YORK

49. By reason of false arrest and false imprisonment committed against them by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiffs were deprived of their liberty and incurred legal expenses.

50. As a result of the aforesaid acts of false arrest and false imprisonment committed against them by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiffs have been damaged in the sum of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1000,000.00) Dollars as punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Battery)

51. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "50" hereinabove as if more fully set forth at length herein.

52. On January 19, 2008 at approximately 7:30 am and thereafter, inside of the 88th Precinct defendant JOHNSON, PIZARRO and the "JOHN DOE" defendants, without probable cause therefor, offensively touched plaintiff CASEY LASHLEY by hitting, kicking and punching him and

conducting a cavity search of his rectum while he was handcuffed.

53. The aforesaid force used by the individual defendants was not reasonable under the circumstances.

54. At the aforesaid time and place defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants were acting within the scope of their employment by the defendant CITY OF NEW YORK.

55. By reason of the aforesaid said battery committed against him by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff suffered and continues to suffer serious and permanent physical and emotional injuries and incurred medical and legal expenses for the treatment of his injuries.

56. As a result of the aforesaid acts of battery committed against him by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiffs have been damaged in the amount of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1000,000.00) Dollars as punitive damages. .

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Malicious Prosecution)

57. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "56" hereinabove as if more fully set forth at length herein.

58. On January 17, 2008 defendant JOHNSON , maliciously and falsely asserted both in testimony and in writing that there had been sales of a controlled substance committed at 151 North

Oxford Walk apartment 4E Brooklyn. N.Y.

59. On January 19, 2008 at approximately 6:00am defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants maliciously caused a criminal prosecution to be commenced against plaintiff CASEY LASHLEY by the defendants acts of searching the apartment ,falsifying the results of that search, taking both CASEY LASHLEY and DONNA RUSS into custody and falsely and maliciously charging CASEY LASHLEY with possession of a controlled substance and drug paraphernalia.

60. Defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants were without probable cause to arrest any plaintiff and CASEY LASHLEY was not even present at the location at the time of the search.

61. At the time defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants falsely and maliciously caused the aforesaid prosecution to be commenced against the plaintiff they were acting within the scope of their employment by the defendant CITY OF NEW YORK

62. By reason of the prosecution maliciously commenced against CASEY LASHLEY by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff was deprived of his liberty forced to defend himself in criminal proceedings and incurred legal expenses.

63. As a result prosecution maliciously commenced against CASEY LASHLEY by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff have been damaged in the amount of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1000,000.00) Dollars as punitive damages.

AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Negligence)

64. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "63" hereinabove as if more fully set forth at length herein.

65. On or about January 19, 2008 The individual defendants violated the plaintiffs' rights to be free from arrest without probable cause and excessive force and to the due process of law guaranteed to them , respectively, by the fourth and fourteenth amendments to the Constitution of the United States in that, acting under color of state law, they without any probable cause or justification, whatsoever, seized and hand cuffed the plaintiffs BARBARA RUSS, T [REDACTED] R [REDACTED] DONNA RUSS AND CASEY LASHLEY, falsely imprisoned DONNA RUSS AND CASEY LASHLEY at the precinct, and beat and maliciously prosecuted CASEY LASHLEY.

66. At the time the individual defendants engaged in the aforementioned illegal and unconstitutional acts they were acting within the scope of their employment by the defendant CITY OF NEW YORK.

67. The aforesaid wrongful acts committed by the individual defendants were the direct result of the recklessness, carelessness and negligence of the defendant CITY OF NEW YORK in screening, hiring, training, retaining and supervising the individual defendants.

68. Solely as a result of the aforesaid recklessness, carelessness and negligence of the defendant CITY OF NEW YORK, and through no culpable conduct of their own, plaintiffs suffered a deprivation of the rights to due process of the law guaranteed to them by the fourth and fourteenth amendments ton the Constitution of the United States, and as a result, suffered loss of their liberty , were publicly humiliated, were intentionally deprived of their personal property, suffered severe

mental anguish and lost time and income from their employment.

69. By reason of the aforesaid recklessness, carelessness and negligence of the defendant CITY OF NEW YORK plaintiffs were deprived of their liberty, property and income and were forced to defend themselves in criminal proceedings and incurred legal expenses.

70. As a result of the aforesaid recklessness, carelessness and negligence of the defendant CITY OF NEW YORK, plaintiffs have been damaged in the amount of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1,000,000.00) Dollars as punitive damages.

AS AND FOR A SIXTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Property Damage)

71. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "70" hereinabove as if more fully set forth at length herein.

72. On January 19, 2008 commencing at about 6:00am at 151 North Oxford Walk apartment 4E, Brooklyn, City and State of New York, the defendants to this action recklessly caused damage to and loss of plaintiffs' personal property when they, without any cause, provocation or justification therefor, trashed the entire apartment damaging furniture and personal belongings as well as removing United States currency.

73. At the time defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants damaged and took property they were acting within the scope of their employment by the defendant CITY OF NEW YORK

74. By reason of the damage to property and monetary loss caused by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff incurred expenses for replacement

and repair.

75. As a result of the property damage and monetary loss caused by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff have been damaged in the amount of One Thousand (\$1,000.00) Dollars and demand an additional One Thousand (\$1,000.00) Dollars as punitive damages.

AS AND FOR A SEVENTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Intentional Infliction of Emotional Distress)

76. Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs "1" through "75" hereinabove as if more fully set forth at length herein.

77. On or about January 19, 2008 The individual defendants violated the plaintiffs' rights to be free from arrest without probable cause and excessive force and to the due process of law guaranteed to them , respectively, by the fourth and fourteenth amendments to the Constitution of the United States in that, acting under color of state law, they without any probable cause or justification, whatsoever, seized and hand cuffed the plaintiffs BARBARA RUSS, T [REDACTED] R [REDACTED] DONNA RUSS AND CASEY LASHLEY, falsely imprisoned DONNA RUSS AND CASEY LASHLEY at the precinct, and beat and maliciously prosecuted CASEY LASHLEY.\

78. At the time defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants committed the aforesaid acts they were acting within the scope of their employment by the defendant CITY OF NEW YORK

79. By committing the outrageous conduct hereinabove described the defendants

JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, acted with the intent to cause , or with reckless disregard for the probability of their causing severe and permanent emotional distress to all plaintiffs..

80.. As a direct and proximate result of the aforesaid actions of the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiffs have suffered and continue to suffer severe emotional distress and anguish, exacerbation of an already existing traumatically caused serious condition of emotional anguish and distress and has thereby incurred and will continue to occur expenses for treatment.

81. As a direct and proximate result of the aforesaid intentional infliction of emotional distress by the defendants JOHNSON, PIZARRO and the "JOHN DOE" defendants while acting within the scope of their employment by the defendant CITY OF NEW YORK, plaintiff have been damaged in the amount of One Million (\$1,000,000.00) Dollars and demand an additional One Million (\$1,000,000.00) Dollars as punitive damages

WHEREFORE,. CASEY LASHLEY, DONNA RUSS, BARBARA RUSS, and BARBARA RUSS as Legal Guardian of T [REDACTED] R [REDACTED], an infant under the age of fourteen years demand judgment against DETECTIVE JUSTIN JOHNSON, Shield No. 3988, POLICE OFFICER ALBERTO PIZARRO Shield No. 4954 P.O. "JOHN DOES" 1-8 AND THE CITY OF NEW YORK as follows

FIRST CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants

SECOND CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants

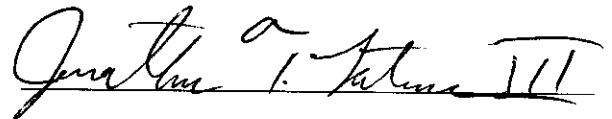
THIRD CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants

FOURTH CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants

FIFTH CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants

SIXTH CAUSE OF ACTION: One Thousand (\$1,000.00) Dollars and One Thousand (\$1,000.00) Dollars as punitive damages against the individual defendants

SEVENTH CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants



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